

**IN THE TRIBAL COURT OF THE
COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**

**COW CREEK
FILED**
APR 6 2016
9:30 A.M.
TRIBAL COURT

<p>LISA M. WILSON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, ET AL,</p> <p style="text-align: center;">Defendant.</p>	<p>NO. TCV-20140175</p> <p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p>
---	--

This matter having come before the Court upon Defendant's Motion for Summary Judgment (hereinafter referred to as "Motion").

Defendant's Motion seeks to dismiss the Complaint alleging that the Plaintiff has not strictly complied with the provisions of the Tribal Code relative to the pre-suit notice provisions therein; failure to sue the correct party; and failure to establish sufficient evidence to raise a genuine issue of material fact.

Plaintiff requests that the Motion be denied in its entirety. Plaintiff alleges that any presentation request was satisfied prior to filing the Complaint; and, there are factual disputes as to causation. Plaintiff further alleges that notwithstanding the Tribal Code provisions relative to tort claim notices, the Cow Creek Band of Umpqua Tribe of Indians has waived sovereign immunity under the compact between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon. Plaintiff alleges that as a result of this waiver, the Plaintiff need not comply with the tort claims notice provisions of the Tribal Code.

Under the Tribal Code the Court is authorized to grant summary judgment motions if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (Tribal Code 3-170).¹

A moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact (*See Celotex Corp. v. Catrett*, 477 U.S.317, 323(1986)). If the initial burden is met, then the burden shifts to the non-moving party to "set forth specific facts showing there is a genuine issue for trial."

¹ In applying the Tribal Code provisions relative to summary judgment, the Court may seek guidance from federal law in the absence of applicable rules in the Tribal Code (*e.g.* Fed. R. Civ. Proc. 56(a)) (*See* Tribal Code 3-10).

Not all evidence creates a material fact in dispute, rather the factual evidence must demonstrate that there is a material fact that is both in dispute and that this material fact will affect the outcome of the litigation.

In the context of this procedural posture, the Court weighs the question of whether the Defendant's Motion meets the standard for summary judgment.

The initial question before the Court is whether the Complaint has complied with the provisions of the Tribal Code relative to the pre-suit notice provisions therein. Absent compliance with these due process provisions the Tribal Court lacks jurisdiction to hear a claim.

The Tribal Board established the Tribal Civil Court with the original and exclusive subject matter over all civil causes of action that are properly filed under the Tribal Code of the Cow Creek Band of Umpqua Tribe of Indians (the code is hereinafter referenced as "TC") (TC 1-45-20 (a)). The Tribal Code defines the terms and conditions for proper filing.

Among these conditions is that any claim brought asserting the limited waiver of Tribal sovereign immunity, such as Plaintiff's claim, requires the claimant first providing a written notice of the claim.

The Tribal Code requires that the notice be by certified mail, return receipt requested to the Secretary of the Board of Directors and the Office of Tribal Attorney. (TC 4-40 (a)).

Further, if the alleged injury was caused by an act or omission of any Tribal Business Corporation² then the notice must also be given to the Chairperson or Chief Executive Officer of the Tribal Business Corporation (TC 4-40 (a)). In this case there is a Tribal Business Corporation involved – the Seven Feathers Hotel & Casino Resort, Corp. which is a division of the Umpqua Indian Development Corporation.

If the Plaintiff fails to properly conform to the Notice provision of LOC 4.40 (a) the Tribal Court does not have jurisdiction over the matter.

Plaintiff alleges that the injury that provides the foundation for this claim occurred on January 10, 2014, therefore any written notice of the claim had to have been postmarked within ninety days thereafter.

A review of the pleadings reveals that Mr. Duran filed a Proof of Service dated March 27, 2014, wherein he declares that he placed a true and correct copy of the Claim for Personal Injury Damages in a sealed envelope and sent the document by certified mail with postage thereon fully prepaid in the United States Mail in Roseville, California on that same date. He states further that this Claim for Personal Injury Damages ("Notice") was sent on March 27, 2014 to Cow Creek Band of Umpqua Indians, Attn: Tribal Chairperson; Cow Creek Band of Umpqua Tribe of Indians, Attn. General Counsel; Umpqua Indian Development Corporation, Attn: Chief Executive Officer; Seven Feathers Hotel and Casino, Attn: General Manager/Loss Prevention Division; and, to

² A "Tribal Business Corporation" is defined in the Code as ". . . a Tribal business corporation, or subdivision thereof, operating under the authority of a corporate charter issued to the Tribe for the Umpqua Indian Development Corporation by the Secretary of the Interior under Section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. §477, as amended) (but excluding for the purposes of this Code corporations chartered under the law of any State)" (TC 4-20(f)).

Travelers Insurance Company, Attn: Andrea Leal, Insurance Adjuster (See Complaint, Proof of Service.)

Under the Tribal Code, as an absolute minimum, service of the claim must be provided in this case to (1) the Secretary for the Board of Directors of the Cow Creek Band of Umpqua Tribe; (2) the Office of the Tribal Attorney; and, (3) the Chairperson or Chief Executive Officer of the Seven Feathers Hotel and Casino Corporation. (TC 4-40 (a)).

Based on Mr. Duran's Proof of Service dated March 27, 2014, the Secretary for the Board of Directors of the Cow Creek Band of Umpqua Tribe was not served within the requisite 90 day period. Lacking full compliance with the Tribal Code the Plaintiff did not effectively bring herself within the requirements of TC 4-40(a) and as a result, this action is not properly before the Tribal Civil Court.

As noted above, this Court has jurisdiction over civil matters pursuant to Title 4 of the Tribal Code, however, before this Court can exercise any civil jurisdiction, the procedural requirements of TC 4-40 must be strictly complied with.

The Tribal Board has left no discretion to the Tribal Court. The Code clearly stated that officials to whom the notices were required under Section 4-40. In this case the notice was not sent to the proper officials.³

The Tribal Code expressly provides that:

"The procedures and standards for giving notice of claims and commencing actions in Tribal Civil Court provided in Section 4-50 of this Code are integral parts of the limited waiver of sovereign immunity provided by this Code and shall be strictly and narrowly construed. . ." (4-50(e)).

In the context of Code 4-50(e) the notice provisions must be strictly construed and this Court is of the opinion that it requires full and complete compliance with the notice provisions.

Plaintiff, however, argues that notwithstanding the Code, the Cow Creek Band of Umpqua Tribe of Indians has waived its sovereign immunity separate and apart from the Tribal Code (Plaintiff Linda Wilson's Opposition to Defendant's Motion for Summary Judgment, p. 12).

Specifically Plaintiff argues that the Compact between the State of Oregon and the Cow Creek Band of Umpqua Tribe of Indians dated April 1997, included a waiver of sovereign immunity that included actions of this nature.

Plaintiff cites to Compact Section 8 which provides:

³ As noted above, the Court's authority is limited by the Tribal Code, given the absence of compliance with the terms therein, the Court lacks jurisdiction to consider the issues rose. While the Court may lack jurisdiction under the Tribal Code, the Tribal Board may elect to authorize the Tribal Court to examine the issues raised by Plaintiff.

“G. Liability for damage to persons and property. During the term of this Compact, the Tribe shall maintain public liability insurance with limits of not less than \$240,000 for one person and \$2,000,000 for any one occurrence for any bodily injury or property damage.

The Tribe’s insurance policy shall have an endorsement providing that *the insurer may not invoke tribal sovereign immunity up to the limits of the policy.* The Tribe shall indemnify, defend and hold harmless the State, its officers, directors, employees and agents from and against any claims, damages, losses or expenses asserted against or suffered or incurred by the State or its officers, directors employers and agents (except as may be the result of their own negligence) based upon or arising out of any bodily injury or property damage resulting or claimed to result in whole or part from any act or omission of the Tribe relating to the inspection of any gaming or gaming related facility pursuant to this Compact.”

(emphasis added). (See *Randy Sifers v. Cow Creek Band of Umpqua Tribe of Indians, et al.*; In the Tribal Court of the Cow Creek Band of Umpqua Tribe of Indians, TC05-0101-CV (2006)).

Plaintiff argues that nowhere in the Compact is there any requirement to comply with the tribal notice provisions. However, the question is not whether there is a requirement in the compact to comply with the notice provisions, rather the linchpin inquiry is whether the Compact applies to third parties such as Plaintiff. In this case Plaintiff has misread the Compact and as a result thereof improperly extrapolated its provisions to cover third persons not privy to the Compact.

One is hard pressed to derive from the Compact language that it was intended to be a general waiver of sovereign immunity by either the Cow Creek Band of Umpqua Tribe of Indians or the State of Oregon. Rather, the context of the quoted provision is to assure the honesty, integrity and security of the gaming operations. It is within this context that the quoted section must be interpreted.

The quoted language was designed to protect the State of Oregon and its employees from any liability while in the performance of their duties under the Compact – it was not a general waiver of sovereign immunity for all claims. Further, Section 13 (E) of the Compact expressly provides that the Compact was for the exclusive benefit of the Tribe and State and that it was not creating any third party rights. (See *Randy Sifers v. Cow Creek Band of Umpqua Tribe of Indians, et al.*; In the Tribal Court of the Cow Creek Band of Umpqua Tribe of Indians, TC05-0101-CV (2006)).

In this case, the quoted Compact language simply does not provide the clear and unequivocal statement waiving sovereign immunity for the type of claim made herein.⁴

Lacking a waiver of sovereign immunity under the Compact that benefits third parties, the Plaintiff must bring herself within the waiver provisions set forth in TC 4-40.

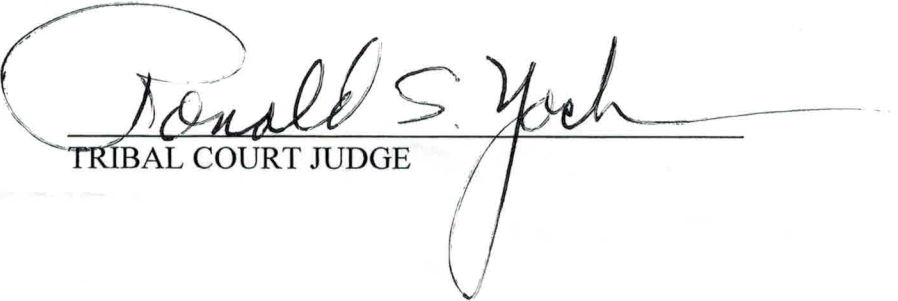
/ / /

⁴ Further, even if one were to find it did in fact create a waiver, it did not affect the Tribe’s ability to condition the waiver on compliance with the notice provisions of the Tribal Code.

In the absence of the requisite tort claims notice to the Tribal Board Secretary, Plaintiff's Complaint must be dismissed. The Plaintiff's Complaint is dismissed with prejudice. As to the other issues raised in the Defendant's Motion to Dismiss, based on the lack of material facts in dispute, this issue need not be addressed since the Complaint is dismissed.

Defendant's attorney shall prepare the appropriate judgment order.

DATED this 6th day of April, 2016.



TRIBAL COURT JUDGE